IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1935 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SIDDHPUR MUNICIPALITY

Versus

UDAY CONSTRUCTION COMPANY

Appearance:

1. First Appeal No. 1935 of 2002
MR PK JANI for Appellant No. 1
MR GT DAYANI for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE C.K.BUCH

Date of decision: 17/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE D.K.TRIVEDI)

Heard Mr. Jani, learned advocate for the appellant and Mr. Dayani, learned advocate for the respondent. During hearing Mr. Jani, learned advocate for the appellant has taken us through the judgement and decree under challenge passed by learned Civil Judge (SD) Patan in Special Civil Suit No. 235/89 (old) and Special Civil Suit No. 85 of 1994 (New).

2. At the time of hearing of the admission of this appeal, we have admitted this appeal only considering the submissions made before us to examine the interest awarded by the trial Court while decreeing the suit of the respondent plaintiff and for that limited purpose, by consent of the advocates appearing in the matter, we have fixed the hearing of this appeal today and also called for R&P from the trial Court. Mr. Jani, learned advocate while arguing the matter has furnished the details about the filing of the suit by the respondent plaintiff against the appellant defendant. The respondent plaintiff has filed suit for recovery of Rs.2,40,183/- and the suit was presented before the Court of learned Civil Judge (SD) Mehsana on 15th July, 1989. Subsequently the said suit was transferred to the Court of learned Civil Judge (SD) Patan and was renumbered as Special Civil Suit No. 85 of 1994. The learned Trial Judge has after considering the evidence led before him has accepted the case of the plaintiff and held that the plaintiff has proved that Rs.1,19,880=76ps. was due from the defendant and accordingly, learned trial Judge has decreed the said suit and awarded interest at the rate of 6% p.a. on a sum of Rs. 1,19,880=76ps. and the said interest was awarded in favour of the plaintiff from the date of filing of the suit and the learned Trial Judge has also awarded proportionate costs to the said suit.

3. It is the contention of Mr. Jani, learned advocate for the appellant that in view of the order passed by the learned Trial Judge by awarding interest from filing of the suit i.e. from July, 1989 and by granting such interest from the date of filing of the suit, the appellant defendant has to pay more than Rs. 93,000/- by way of interest and accordingly, he prayed that the decree regarding interest be modified and according to him, such interest may be awarded to the plaintiff from the date of judgement.

4. Mr. Dayani, learned advocate for the respondent original plaintiff has vehemently opposed the submissions

of Mr. Jani as according to him the plaintiff has claimed interest while filing suit at the rate of 18% p.a.. According to Mr. Dayani that the learned Trial Judge ought to have awarded interest as claimed by the plaintiff and prayed that this court will not interfere with the finding of interest while deciding this appeal.

5. Considering the submissions made before us and without expressing anything on the point raised before us and further that, this order will not give any precedent in other matter, we are allowing this appeal by modifying the order of the trial Court in respect of decree where the trial Court has awarded interest in favour of respondent plaintiff from the date of filing of the suit i.e. from 15th July, 1989. The suit was of 1989 and was subsequently transferred to the court of learned Civil Judge (SD) Patan in the year 1994 and as per the judgement and decree passed by the learned Trial Judge, the suit was decreed as per judgement and decree dated 5th September, 2001. Accordingly, ends of justice will meet, if respondent plaintiff is entitled to interest not from the date of filing the suit but instead of that the respondent plaintiff is entitled to interest as per decree from 5th September, 1999. Accordingly while allowing the appeal, the order of trial Court be modified to above extent. Rest of the decree is confirmed. No other points are canvassed before us. This order may not be cited as precedent.

(D.K. Trivedi, J.)

(C.K. Buch, J.)

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